

Director, Minerals Management Service  
Attention: Policy and Management Improvement  
1849 C Street, N.W., Mail Stop 4230  
Washington D.C. 20240-0001

Re: Response to Request for Comments on the Open and Non-Discriminatory Movement of  
Oil and Gas As Required by the Outer Continental Shelf Lands Act

Dear Sirs:

On April 12, 2004, the Department of the Interior, Minerals Management Service ("MMS") issued an Advance Notice of Proposed Rulemaking and Announcement of Public Meetings. In the Notice, the MMS requested comments and suggestions to assist it in potentially amending its regulations regarding how the Department of Interior (DOI) should ensure that pipelines transporting oil or gas under permits, licenses, easements, or rights of way on or across the Outer Continental Shelf (OCS) provide open and non discriminatory access to both owner and non owner shippers as required under section 5(f) of the Outer Continental Shelf Lands Act (OSCLA). The MMS also held public meetings to gather comments on this issue.

GulfTerra Energy Partners, L.P (GulfTerra) is the largest independent gatherer of oil and gas in the Gulf of Mexico. GulfTerra went public on the NYSE in late 1993 under the name of Leviathan Gas Pipeline Partners, L.P. Since going public, in addition to several significant on-shore mid-stream acquisitions, the company has focused on providing new pipeline and platform infrastructure for the deepwater Gulf of Mexico. Over the last ten years, GulfTerra has developed either solely or with partners approximately 1600 miles of new oil and gas pipeline projects with total capacities of 1.1 million BBLS per day and 3.5 BCFD. GulfTerra has also built four shelf based hub platforms and two deepwater hub platforms. The total cost of this new infrastructure has been approximately \$2 billion. As such, GulfTerra has an interest in the subject of the MMS' notice. For that reason, Mr. James Lytal, President and Chief Commercial Officer of Gulf Terra participated and provided comments at the MMS' public meeting in New Orleans, Louisiana on May 14, 2004.

As discussed more fully below, GulfTerra believes that MMS must carefully weigh both the potential benefits and the potential harm that could arise from any new regulatory scheme promulgated for the OCS. The OCS has been developed successfully for years with only rare examples of complaints regarding discriminatory access to facilities. One of the reasons for this success has been the ability of the OCS pipelines and shippers to negotiate the terms of transportation contracts that will enable each party to go forward with a successful transaction. For example, when entering into a transaction involving construction of new oil and/or gas pipeline infrastructure, GulfTerra will typically seek a life of reserve dedication and a fee for the services performed. On most of these transactions, GulfTerra does not ask for volume guarantees. This places GulfTerra at risk for achieving an acceptable return on its invested capital. Thus, both GulfTerra and the producers are at risk that the wells perform as expected. Typically GulfTerra needs more reserves produced from the area than are originally dedicated by

the “anchor producer” to receive an acceptable return. When GulfTerra constructs a new pipeline or platform, the project constructed is typically built larger than the anchor producer requires. By doing so, GulfTerra is trying to provide additional capacity to enable it to serve future needs resulting from additional activity in the area of our pipelines and platforms. GulfTerra’s ability to put capital at risk and oversize projects for future development would be significantly hindered, if not totally eliminated, by a new regime of onerous regulation and public disclosure of all the terms and conditions of our transactions.

## THE OFFSHORE MARKET IS HIGHLY COMPETITIVE

As stated above, GulfTerra has been involved in a significant number of projects in the Gulf of Mexico. In each negotiation, the producer or producers had at least one competitive third party alternative and also had the ability to build the infrastructure themselves if the third party offers were unacceptable.

As an infrastructure provider within this competitive environment, GulfTerra is keenly aware that it will be working continually with the same producers across the Gulf and that it needs to be fair and reasonable on rates and services in order to ensure continued business. Consequently, GulfTerra has not denied access to producers seeking capacity on our oil or gas pipelines, either gathering or jurisdictional. In fact, the only instance where GulfTerra would not offer access on a firm basis would be if the oil and/or gas pipeline’s capacity was totally subscribed on a firm basis.

Furthermore, while shippers utilizing the same or similar asset may pay different rates, GulfTerra has a reasonable basis for the variances in rates charged and therefore such variances should not be considered discrimination. For example, different customers on a particular system may negotiate different rates. This can occur due to the size of the reserves, water depth, potential future reserve development in the area, the cost to connect the reserves, or consideration that might be given in other places the companies do business. In short, GulfTerra has always offered its’ shippers economically based rates that are fair and reasonable considering the unique components of each shipper’s service. This flexibility should be permitted under any standard adopted pursuant to any rulemaking by the MMS.

In light of the competitive pressures that exist, the current regulatory oversight has been appropriate and positive. GulfTerra’s experience has been that pipelines and producers have been able to negotiate fees in a competitive environment. It also has promoted risk-taking and over sizing of infrastructure which provides incentives for additional drilling and development.

## THE CURRENT ENVIRONMENT SUPPORTS THE DEVELOPMENT OF TRANSPORTATION INFRASTRUCTURE

The ongoing development of the energy supply system in the Gulf of Mexico is an indicator of the success of competitive forces at work. Furthermore, the continued construction of infrastructure by companies such as GulfTerra is critical to the nation’s energy future. The Federal Energy Regulatory Commission recently noted that ensuring that the nation has “a sufficient energy infrastructure is a crucial part of what FERC’s mission is.” *In re Midwest*

*Energy Infrastructure Conference*, AD02-22-000 (Nov. 13, 2002) Indeed, “[a] robust natural gas pipeline infrastructure is critical for the reliability of the Nation’s energy supply.” Federal Energy Regulatory Commission, *Strategic Plan for Fiscal Years 2003-2008*, Sept. 2003, at 3, 6; (Commission’s 2003 Natural Gas Market Assessment has noted the “need for expanded natural gas transmission capacity”). Consequently, it is imperative that any rulemaking consider the potential impact on the development of this infrastructure.

Under the current model GulfTerra made significant investments in greenfield and other projects. For example, the company is finalizing the construction of the Cameron Highway Oil Pipeline, at a price tag of approximately \$460 million, which will provide much needed capacity for deepwater producers to access markets in Texas. Similarly, GulfTerra has committed approximately \$60 million to construct the Phoenix Pipeline to gather deepwater natural gas. In both projects, as with numerous others, GulfTerra provided this capital investment without throughput guarantees and therefore without an assured revenue stream. In both projects, GulfTerra oversized the pipelines to provide capacity for future customers and encourage additional offshore development. And, in both projects, GulfTerra was willing to accept the attendant business risks because the competitive marketplace permits transportation providers and producer / shippers to freely negotiate arrangements to their mutual benefit. The requirement that all shippers receive identical terms for services that may vary from project to project will change the underpinnings of this flexibility as pipelines would take less risk from the standpoint of over-sizing infrastructure and would most likely minimize the project risk by charging higher fees. The development of future projects in the Gulf would be delayed if pipelines were not able to negotiate individual transactions and not willing to take the risk of over-sizing infrastructure.

#### THERE IS NOT SUFFICIENT EVIDENCE OF UNDUE DISCRIMINATION TO WARRANT A NEW REGULATORY SCHEME

The history of infrastructure development in the Gulf of Mexico has been a positive one. To our knowledge, with one exception, there has never been a fully litigated proceeding involving offshore assets not directly regulated by the FERC. Transportation providers and producers / shippers have longed worked together in their own mutual interest. Consequently, GulfTerra believes that no new regulatory oversight process is required. However, if MMS decides to implement one, it should be an informal complaint hotline procedure, similar to the one at the FERC. Because GulfTerra hopes to do business with these producers across the Gulf, in virtually all instances, an informal complaint procedure should result in an amicable resolution. For now, GulfTerra urges the MMS to limit the complaint procedure to the hotline. Based on the number of complaints received, the MMS can later opt to establish a more formal procedure. However, until there is empirical evidence that such a procedure is necessary, the time and expense of establishing a more formal procedure is unnecessary. The experience at the FERC demonstrates that most complaints are resolved at the informal level. Furthermore, GulfTerra believes most parties would participate in an informal process due to the lower cost and faster resolution of a dispute.

Similarly, GulfTerra believes that the collection of data should not be the goal of this rulemaking and that the burdens of the data collection will not justify the benefits. In addition to the burden

placed upon the data provider, the disclosure of confidential terms and conditions places the pipeline at a disadvantage in future negotiations. Thus, rather than creating “transparency” or a “level playing field”, the disclosure of this data impairs the negotiating ability of one party and creates a disincentive to invest in future infrastructure. The FERC recognized the sensitivity of such data when it required such reporting from offshore pipelines, but accorded these reports protected status. In short, there is no useful purpose to be served by the required collection of data either on scheduled or a periodic basis. In any event, as a commenter stated at the public conference in Houston, “When a company does business in the Gulf, it understands the markets and it understands the competition. It knows when it is receiving a fair deal and when it is not. It does not need data from the MMS to determine this.” In addition, if competitive information is required to be publicly disclosed, the service providers will be hindered in what types of deals they will be able to offer a producer for fear that the exact terms would be demanded for projects that for whatever reason are not comparable to the one negotiated.

***THE MMS CAN CARRY OUT ITS’ LEGISLATIVE MANDATE WITHOUT HEAVY  
HANDED REGULATION***

GulfTerra agrees that the MMS must ensure that pipelines transporting oil or gas under permits, licenses, easements, or rights of way on or across the Outer Continental Shelf (OCS) provide open and non discriminatory access to both owner and non owner shippers as required under section 5(f) of the Outer Continental Shelf Lands Act (OSCLA). However, GulfTerra does not believe that additional regulation of the OCS is necessary to accomplish this responsibility. The current business environment in the Gulf is competitive and efficient as can be seen from the significant development of infrastructure in the Gulf. The history of infrastructure development and operations in the Gulf indicates that, with only minor exceptions, transportation providers and producer shippers consistently negotiate and contract for services at rates, and under terms and conditions that are mutually beneficial. In addition, GulfTerra and other similar companies are over sizing pipelines and platforms to help stimulate future development and taking reserve risk with the producers. By providing the capital for the pipelines and platforms the builders of the infrastructure are freeing up more drilling capital for these same producers. The collection of sensitive commercial data will not add value to the process, but only subtract from it. Moreover, the provision of an informal complaint process will ensure that producers / shippers have the protection of a regulatory agency if needed. Placing a more burdensome regulatory structure on top of this – especially one that does not respect the confidentiality of business relationships -- will be counterproductive and can only discourage investment.

Respectfully submitted,

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Gregory W. Jones /s/

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